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MAY, NINETEEN HUNDRED AND ELEVEN.

NOTES.

EFFECT OF ASSIGNMENT OF STOCK CERTIFICATE WITHOUT REGISTRATION.—Under the early conception that the interest of a stockholder in a corporation was purely equitable in its nature,[1] a transfer of the certificate would undoubtedly operate to vest the entire right of the registered owner in his assignee. As, however, a shareholder's interest has long ceased to be regarded as equitable,[2] the relative rights of parties asserting conflicting claims to corporate stock are properly determinable under rules of law rather than of equity. The obligation of the company to its members is not a debt,[3] but is rather a duty to so preserve its property and carry on the business as to best further the prosperity of the company and incidentally that of the stockholder,

[1]Williston, Business Corporations before 1800, 3 Select Essays 195, 220-221.

[2]Machen, Modern Law of Corporations § 832.

[3]Sweet, What is a Chose in Action, 11 L. Q. R. 238; Pease *v.* Chi. Crayon Co. (1908) 235 Ill. 391.

and the latter's interest may be regarded as an undivided share in the whole bundle of rights and liabilities that together form the corporation.[4] This interest would seem to be properly classified as a chose in action, since the connotation of the term, although anciently limited to possessory rights recoverable in suit,[5] has been extended to include all incorporeal interests not properly regarded as realty,[6] and this classification has apparently been adopted by the courts.[7]

As the common law tenet of non-assignability was applicable only to those choses in action which were not recognized as rights of property, the doctrine of transferability as applied to corporate shares presents no logical difficulty and a determination of any question relating to the transfer of stock would seem to be possible by an application of the general principles of law as developed in connection with choses in action. It would follow that, as between the parties, an assignment of the certificate with a power to cause the stock to be transferred upon the books of the company should be regarded as vesting in the assignee all the rights of the owner of the stock.[8] When, however, the rights of the corporation or of third persons are involved, the assignment, until an actual transfer has been made upon the books, should be treated as a mere power of attorney, but, nevertheless, a legal right to get in the title which the courts will protect.[9] The language of some of the cases, it is true, lends much support to the view that the delivery of a certificate endorsed in blank passes the entire legal title,[10] but as such statements were not necessary for the conclusions reached, it is submitted that they do not represent the law. To consider the transfer of the certificate as alone vesting the legal title to the stock in the transferee, would require that the certificate be regarded either as a chattel or as negotiable paper. Since the latter conception would not seem to accord with commercial usage[11] and as

[4]Lowell, Transfers of Stock § 4.

[5]Lowell, Transfers of Stock §§ 8, 9.

[6]Warren, Choses in Action 18.

[7]See Nelson *v.* Owen (1896) 113 Ala. 372; Allen *v.* Stewart (1895) 7 Del. Ch. 287; McCarthy *v.* Crawford (1909) 238 Ill. 38; Spalding *v.* Paine's Adm'r. (1883) 81 Ky. 416; Feige *v.* Burt (1898) 118 Mich. 243; Lipscomb *v.* Condon (1904) 56 W. Va. 416; Church *v.* Citizen Street R. Co. (1897) 78 Fed. 526.

[8]See Cushman *v.* Thayer Mfg. Jewelry Co. (1879) 76 N. Y. 365; Sather *v.* Home Sec. Sav. Bank (1908) 49 Wash. 672; Sav. Bank *v.* Capitol Sav. Bank (1904) 77 Vt. 123; Crenshaw *v.* Mining Co. (1904) 111 Mo. App. 355; Culp *v.* Mulvane (1903) 66 Kan. 143; *cf.* Russell, Rec. *v.* Easterbrook (1898) 71 Conn. 50.

[9]Real Estate Co. *v.* Bird (1899) 90 Md. 229; *cf.* People's Bank *v.* Exchange Bank (1902) 116 Ga. 820.

[10]See McNeil *v.* Tenth Nat. Bank (1871) 46 N. Y. 325; Rough *v.* Breitung (1898) 117 Mich. 48 (statute); Clews *v.* Friedman (1903) 182 Mass. 555 (statute).

[11]Accordingly, it has repeatedly been decided that a stock certificate is not negotiable. American Press Assoc. *v.* Brantingham (N. Y. 1902) 75 App. Div. 435; Lipscomb *v.* Condon *supra;* Church *v.* Citizen Street Ry. Co. *supra;* Beckwith *v.* Galice Mines Co. (1908) 50 Ore. 542; O'Dea *v.* Hollywood Cemetery Ass'n (1908) 154 Cal. 53; Bank *v.* Safe & Lock Co. (1902) 66 Oh. St. 367; O'Herron *v.* Gray (1897) 168 Mass. 573; Culp *v.* Mulvane *supra; contra,* Succession of Desina (1909) 123 La. 467 (statute).

the former, in confusing the evidence of an intangible interest with the right itself,[12] appears to be repugnant to the logic of the common law, the adoption of either would be justifiable only in the event that a proper settlement of the controversy in which it might be invoked could not otherwise be reached. The existence of such a necessity is, however, not apparent, for a liberal interpretation and application of the rules of agency and estoppel furnish an adequate protection to the stockholders[13] as well as to the corporation[14] and to persons dealing with them.[15] Thus, if a broker sells a certificate endorsed in blank which has been delivered to him as collateral[16] or for safe keeping,[17] the original owner, having clothed him with an apparent authority to sell, is estopped from asserting title against an innocent purchaser for value.[18] Had the certificate, however, been placed in the hands of a mere messenger, the purchaser would not have been justified in assuming an authority to sell and would, accordingly, have had to bear the loss.[19] Similarly, in a controversy between successive assignees, the one having the prior right would prevail,[20] upon the theory that when equities are equal, they take precedence in the order of their creation. Furthermore, as the corporation is justified in treating the registered owner as the stockholder until a transfer is demanded, an unregistered assignee has no recourse against the company for dividends paid to the holder of record.[21] By an application of similar principles, the defendant corporation in the recent case of *Union Bank* v. *U. S. Exchange Bank* (N. Y. 1911) 127 N. Y. Supp. 661, was denied the right to offset a debt due from a stockholder of record against the claim of his transferee for dividends upon dissolution. The statement was made that the delivery of the certificate vested the legal title to the shares in the assignee, but, as the debt arose subsequently to the assignment, the decision is supportable upon the less novel theory of an assignment of a chose in action and therefore would not seem to modify the existing law.

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[12]See Brown *v.* Hotel Ass'n. of Omaha (1901) 63 Neb. 181; Hill *v.* Kerstetter (1908) 43 Ind. App. 1.

[13]Treadwell *v.* Clark (1907) 190 N. Y. 51; Geyser-Marion Gold Min. Co. *v.* Stark (1901) 106 Fed. 558; Penna. Co. *v.* Franklin Fire Ins. Co. (1897) 181 Pa. St. 40; Davis *v.* Nat. Eagle Bank (R. I. 1901) 50 Atl. 530; Cox *v.* Bank (1896) 119 N. C. 302.

[14]Trimbel *v.* Bank (1897) 71 Mo. App. 467; *cf.* Ry. Co. *v.* Bank (1897) 56 Oh. St. 351.

[15]Nat. Bank of the Pacific *v.* Western Pacific Ry. Co. (1910) 157 Cal. 573; Mundt *v.* Bank (1909) 35 Utah 90; Reilly *v.* Absecom Land Co. (1908) 75 N. J. Eq. 71; Beckwith *v.* Galice Mines Co. *supra;* Westminster Bank *v.* Electrical Works (1906) 73 N. H. 465.

[16]McNeil *v.* Tenth Nat. Bank *supra.*

[17]Shattuck *v.* American Cement Co. (1903) 205 Pa. St. 197; O'Mara *v.* Newcomb (1906) 38 Colo. 275.

[18]McNeil *v.* Tenth Nat. Bank *supra;* Elliott *v.* E. C. Miller & Co. (1908) 158 Fed. 868; *cf.* Merchants Bank *v.* Williams (1909) 110 Md. 334.

[19]Hall *v.* Wagner (N. Y. 1906) 111 App. Div. 70.

[20]Cushman *v.* Thayer Mfg. Jewelry Co. *supra.*

[21]Campbell *v.* Perth Amboy, etc., Ass'n (N. J. 1909) 74 Atl. 144; Brisbane *v.* D. L. & W. R. R. (1883) 94 N. Y. 204; *cf.* Blooming Grove Cotton-Oil Co. *v.* First Nat. Bank (Tex. 1900) 56 S. W. 552.